United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: August 7, 2001

TO : Curtis A. Wells, Regional Director

Martha E. Kinard, Regional Attorney

Claude L. Witherspoon, Assistant to Regional Director

Region 16

employment.

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice 524-1717-0500

524-1717-5700

SUBJECT: Wal-Mart Stores, Inc. 524-3350-7900

Case 16-CA-20951 524-5012-3500

524-5029-8700 524-5029-8900

This case was submitted for advice pursuant to Memorandum OM 00-24 for review and possible coordination with other Wal-Mart cases seeking a nationwide remedy against Wal-Mart (the Employer). The issues here are whether the Employer violated Sections 8(a)(1), (3), and (4) by disciplining and discharging employee Dottie Jones and Section 8(a)(5) by failing and refusing to bargain with UFCW Local 540 (the Union) regarding changes to Jones'

The Employer operates a superstore in Jacksonville, Texas. On August 9, 2000, the Board certified the Union as collective bargaining representative of Jacksonville meat market employees. Subsequently, the Board denied a motion for summary judgement on a test of certification complaint and remanded for a hearing on the Employer's claims that the unit is not appropriate based on the Employer's implementation of a "case ready meat" program in its meat department operations.

Dottie Jones was employed as a meatcutter at the Employer's Jacksonville store until February 2001. Jones was hired as a cashier in October 1999. She was transferred to the meat market in January 2000, approximately one month prior to the election that ultimately led to the Union's certification. Prior to the election, Jones was relatively quiet Union supporter; after the election Jones was identified as a "Yes" vote by coworkers, and she testified in a post-election hearing on objections. Subsequently, Jones claims she and other pro-

Union employees were "treated like outcasts" and at least four of the seven Union supporters have been fired. 1

On November 21, 2000, Jones suffered an on-the-job knee injury that required surgery. After the surgery, Jones was restricted to light duty.

On February 7, 2001, Jones called Store Manager McCall to advise him of her progress, stated that she was unable to work until after her next doctor's appointment, and asked for a leave of absence until then. McCall indicated that a leave of absence would not be a problem.

On February 12, 2001, Jones received a letter from Assistant Manager Mickey offering Jones a greeter job. Jones assumed the demands of the greeter job exceeded her doctor's restrictions and, as Mickey had directed, called the store and left a message to that effect. The next day Jones received a letter from McCall denying her request for a leave of absence. McCall's letter stated that Jones was cleared for light-duty work, but Jones had refused the ??greeter job, a light-duty assignment. Jones then sought her surgeon's opinion regarding the greeter job, but he did not respond.

On February 23, Jones met with McCall, Mickey, District Manager Neighbors, an assistant manager, and Union representative Odell. Jones explained her position and asked for an extension of her medical leave. McCall denied Jones' request, characterizing her rejection of the greeter job as job abandonment. McCall then presented Jones with a termination form summarizing that opinion. Neighbors told Jones to seek a second opinion for her injury, adding that Wal-Mart did not have any jobs that apparently would meet her doctor's restrictions.

Jones then asked if she could transfer to a store in Childress, TX, 3 where she and her husband had recently

¹ This case addresses only the alleged discrimination against Jones.

² Jones refused to sign, fearing that doing so would jeopardize payment of her medical bills.

 $^{^{3}}$ The Employer claims that Childress is a seven-hour drive from Jacksonville.

moved. Citing discipline in Jones' file, 4 McCall said a transfer would be impossible. Jones stated that she thought that discipline would have been removed from her file after six months. McCall told Jones she was mistaken and that any discipline remains in an employee's file for one year.

At this point in the meeting, Odell told the Wal-Mart managers that any changes to Jones' terms and conditions of employment had to be negotiated with the Union. McCall and Neighbors both told Odell that the Employer did not recognize a union at the Jacksonville store, and had no obligation to bargain with the Union for any reason.

We agree with the Region that the Employer violated Sections 8(a)(1), (3), and (4) the Act by disciplining and discharging Jones; refusing to accommodate Jones following her job-related injury; and refusing to transfer Jones from the Jacksonville, TX, store to a Wal-Mart store in Childress, TX. We also agree that if the unit of meat workers remains viable, the Employer violated Section 8(a)(5) of the Act by failing and refusing to bargain with the Union regarding changes to terms and conditions of Jones' employment. However, this allegation cannot be alleged in a complaint pending the outcome of discussions on the unit determination. Accordingly, if the Union is willing to withdraw its 8(a)(5) allegation, the Region is authorized to issue a Section 8(a)(1), (3) and (4) complaint, absent settlement. If the Union wishes to pursue this particular 8(a)(5) allegation, then the Region should hold complaint proceedings in abeyance pending resolution of the unit question.

[FOIA Exemption 5

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B.J.K.

⁴ Jones received a verbal warning for her part in an alleged "backstocking" incident wherein she arranged to purchase overripe bananas that were headed for the garbage. Others involved in the incident were apparently either terminated or suspended.